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in the case of a conditional delivery, where title does not pass as between the vendor and vendee, the latter can, nevertheless, give good title to a bona fide purchaser or pledgee.¹² The weight of authority, however, is that as a worthless check is not payment, title does not pass, and the seller is allowed to reclaim his goods even as against a bona fide purchaser for value.¹³ On principle, it would seem that this is placing an unwarranted burden upon the bona fide purchaser for value and that, as between him and the original seller, the loss should preferably fall upon the latter, who made the situation possible. It is to be hoped that the instant case will not be blindly followed as decisive of the rights of the bona fide purchaser for value.¹⁴ *H. A. M.*

WORKMEN'S COMPENSATION ACT: RIGHT TO COMPENSATION FOR DISEASE ARISING OUT OF EMPLOYMENT—Although the Industrial Accident Commission had, in at least one instance, granted an award of compensation¹ for contagious² disease, an appeal had never been taken from such an award until the case of *City and County of San Francisco v. Industrial Accident Commission*³ came before the Supreme Court. In this case the employee contracted influenza while working as a hospital steward during the course of a general epidemic. The award was sustained and the decision has since been followed in *Engels Copper Mining Company v. Industrial Accident Commission*,⁴ the facts of which are almost identical.

In 1917 the Workmen's Compensation Act⁵ was amended by the addition of a definition of the term "injury" which includes "any injury or disease arising out of the employment."⁶ California seems to be the only state which has thus expressly provided for compensation for disease, the general tendency of legislatures having been to exclude disease.⁷ One effect of this express statutory provision is to relieve the courts from the necessity of deciding whether a given disease is an "accidental injury," or an

¹² *Parker et al v. Baxter et al* (1881) 86 N. Y. 586.

¹³ *National Bank of Commerce v. Chicago etc. Ry. Co.* (1890) 44 Minn. 224, 46 N. W. 342, 20 Am. St. Rep. 566, 9 L. R. A. 263; *Johnson v. Brinkman Commission Co. v. Central Bank* (1893) 116 Mo. 558, 22 S. W. 813, 38 Am. St. Rep. 615.

¹⁴ For a discussion of this phase of the question, cf. Williston on Sales, § 346.

¹ *Petersen v. San. Francisco Hospital* (1916) 3 Cal. Ind. Acc. Com. Dec. 395.

² "Contagious," applied to a disease of which the cause is transmitted from person to person, through houses, villages, cities and countries (Gould's Dictionary of Medicine). See also Stedman's Medical Dictionary.

³ (June 30, 1920) 60 Cal. Dec. 36, 191 Pac. 26. Rehearing in Supreme Court denied July 30, 1920.

⁴ (Sept. 17, 1920) 60 Cal. Dec. 319.

⁵ Cal. Stats. 1913, ch. 176; Cal. Stats. 1915, ch. 541, 607, 662; Cal. Stats. 1917, ch. 586; Cal. Stats. 1919, ch. 471.

⁶ Cal. Stats. 1917, ch. 586, § 1 (4).

⁷ 1 Honnold on Workmen's Compensation, § 138, p. 536.

"injury," a necessity which faces courts of all jurisdictions which limit liability in the manner indicated⁸ and which faced California courts⁹ under the statute of 1913,¹⁰ which limited liability to personal injuries sustained by accident.

Under the Workmen's Compensation Act as it was amended in 1917 and now stands,¹¹ a difficulty of proof arises in connection with contagious as distinguished from non-contagious disease, a difficulty which is increased when the disease is contracted during the course of a general epidemic. In the determination of the question as to whether or not a disease arises "out of and in the course of the employment"¹² the courts are much at the mercy of medical experts. In *City and County of San Francisco v. Industrial Accident Commission* the court said, referring to the evidence supporting the award, "It, of course, cannot be said that from these facts it is certain that Slattery contracted his sickness because of his employment. But certainty is not required. . . . We cannot disturb the award unless we can say that a reasonable man could not reach the conclusion which the commission did." This ruling is in accord with previous decisions.¹³

It appeared that hospital employees throughout the city were attacked from five to eight times more frequently than members of the community at large. Referring to these facts, the court said that if the risk outside the hospital were anything like the risk within it, an award of compensation would not be justified. In the *Engels* case the court found that the order of the superintendent of a mining company directing the employee to assist in caring for the company's influenza patients subjected him to "exceptional exposure." The award was sustained upon the reasoning adopted in *City and County of San Francisco v. Industrial Accident Commission*, although there was no statistical demonstration of relative risks in the later, as in the earlier case. These cases show that the existence of an epidemic introduces nice questions of fact, but in no way alters the rules to be applied. The decisions appear to be sound.

The amendment adopted in 1917 in effect grafted upon the Workmen's Compensation Act a species of sickness insurance which perhaps might better be a subject for health insurance

⁸ Compensation is not generally allowed under these statutes for diseases termed "occupational" as distinguished from those arising from some unusual condition of employment. See note L. R. A. 1918F 867 and an article by Harry B. Bradbury (1914) 62 *University of Pennsylvania Law Review*, 329.

⁹ *Fidelity and Casualty Co. v. Ind. Acc. Comm.* (1918) 177 Cal. 614, 171 Pac. 429.

¹⁰ Cal. Stats. 1913, ch. 176, § 12 (a).

¹¹ *Supra*, n. 5.

¹² Cal. Stats. 1917, ch. 586, § 6 (a).

¹³ *Santa v. Ind. Acc. Com.* (1917) 175 Cal. 235, 165 Pac. 589; *Hartford Accident and Indemnity Co. v. Ind. Acc. Com.* (1917) 32 Cal. App. 481, 163 Pac. 225, 4 Cal. Ind. Acc. Com. Dec. 1; *Bethlehem Shipbuilding Corporation v. Ind. Acc. Com.* (1919) 58 Cal. Dec. 421, 185 Pac. 179.

legislation.¹⁴ The extent to which the amendment has increased liability is not yet certain, but the two decisions here considered would lead one to believe that several employments will be seriously affected, as for instance, nursing and teaching, and that all employments will be affected to some degree. C. M.

Book Reviews

CRIME AND CRIMINALS. By C. A. Mercier. Henry Holt & Co., New York City, 1919. pp. xvii, 290.

The subject of criminology is a comprehensive one, involving as it does all phases of abnormal human behavior. To Mercier belongs great credit for his contributions to forensic psychiatry. Today we certainly are entering upon a little explored field of psychology—human behavior. Mercier early recognized that the study of conduct would lead us ultimately to a clearer understanding of the causes of crime. His book, *Conduct and Its Disorders*, published in 1911, stands alone as the first study in existence on the subject of conduct in general. Mercier calls his study of conduct "praxiology" or the science of conduct, to distinguish it from psychology, the science of mind. In this country we are wont to call the study of conduct behavior psychology, and within the past two or three years considerable literature has sprung up regarding this most important subject. We must admit, however, that Mercier was the pioneer in the subject. The book at hand is of great value to those who are interested in criminology. The first chapter deals with the factors of crime which are described as internal and external. Much of this chapter contains extracts from Mercier's book on *Conduct and Its Disorders*.

The logical conception of the author is exemplified in the following quotations from chapter 1 of the book:

"Crime, in common with all other varieties of conduct, consists of acts in pursuit of ends, and in common with other modes of conduct may be contemplated with respect to the action, or with respect to the end or purpose. All action, criminal as well as harmless, presents certain complementary pairs of qualities, ranging in degree from the maximum to the minimum of each quality, which is the same thing as from the minimum to the maximum of the complementary quality. Thus, all action is in some degree spontaneous or elicited by circumstances, scanty or

¹⁴ See tabular summary of provisions of health insurance acts, "Compulsory Health Insurance," Bulletin of University Extension Division, University of California, New Series, Vol. II, No. 16.

For discussion of various social aspects of workmen's compensation and health insurance legislation, see Proceedings of the Conference on Social Insurance, Bulletin of the United States Bureau of Labor Statistics, Whole Number 212, Workmen's Insurance and Compensation Series No. 10.